

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SURFACE SUPPLIED, INC.,

No. C 13-0575 MMC

Plaintiff,

v.

**ORDER DENYING AS MOOT
DEFENDANT'S MOTION TO DISMISS
AND MOTION TO STRIKE**

KIRBY MORGAN DIVE SYSTEMS, INC.,

Defendant.

AND RELATED COUNTERCLAIMS.

Before the Court are defendant and counterclaimant Kirby Morgan Dive Systems, Inc.'s ("Kirby Morgan") "Motion to Dismiss Counter-Defendant's Sixth and Seventh Causes of Action in Third Amended Counterclaim" and "Motion to Strike Counter-Defendant's Affirmative Defenses and First, Third, Fourth, and Fifth Causes of Action in Third Amended Counterclaim," both filed November 12, 2013 and noticed for hearing on December 20, 2013. In the interim, on December 12, 2013, Kirby Morgan, with leave of court, filed its "First Amended Counterclaims" against plaintiff/counter-defendant Surface Supplied, Inc. ("SSI"), and, on January 10, 2014, SSI filed its "Answer of SurfaceSupplied Inc. to Kirby Morgan Dive Systems, Inc.'s First Amended Counterclaims, Third Amended Affirmative Defenses of SurfaceSupplied Inc.; and Fourth Amended Counterclaims of SurfaceSupplied Inc. against Kirby Morgan Dive Systems, Inc."

On January 13, 2014, the parties filed a Joint Stipulation to extend Kirby Morgan's deadline to respond to SSI's most recently filed amended answers and counterclaims, by which stipulation the parties seek an extension of the date for Kirby Morgan's response to said pleading and, in particular, to the later of twenty-one days after the date of the Court's

1 resolution of Kirby Morgan's above-referenced two motions or twenty-one days after the
2 deadline for counter-defendants Heliox, Inc. ("Heliox") and Jason Van der Schyff's ("Van
3 der Schyff") response to Kirby Morgan's most recent pleading. For the reasons set forth
4 below, the Court declines to adopt the stipulation and rules as follows.

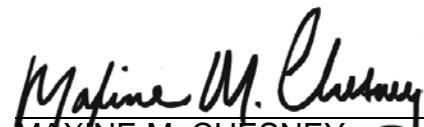
5 "[A]n amended pleading supersedes the original," Hal Roach Studios, Inc. v. Richard
6 Feiner & Co., Inc., 896 F.2d 1542, 1546 (9th Cir. 1989), and, as a general rule, "renders it
7 without legal effect," Lacey v. Maricopa Cnty., 693 F.3d 896, 927 (9th Cir. 2012).

8 Here, although SSI in its Fourth Amended Counterclaims sets forth without apparent
9 change the causes of action and majority of affirmative defenses addressed by the above-
10 referenced two motions, it also adds a new counterclaim, and, consequently, the Court, in
11 the interests of judicial economy, finds it appropriate to hear at one time all potential
12 challenges to SSI's current pleading.

13 Accordingly, the Court hereby DENIES as moot and without prejudice Kirby
14 Morgan's motions to dismiss and to strike; Kirby Morgan's response to SSI's January 10,
15 2014 pleading is due no later than twenty-one days from the date Heliox and Van der
16 Schyff file their respective responses to Kirby Morgan's First Amended Counterclaims.

17 **IT IS SO ORDERED.**

18 Dated: January 15, 2014


MAXINE M. CHESNEY
United States District Judge

21
22
23
24
25
26
27
28